

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.711 OF 2007
IN
NOTICE OF MOTION NO.2756 OF 2007
IN
SUIT STAMP NO.2811 OF 2007**

1. Singapore Airlines Limited
2. Mr.Foo Chai Woo .. Appellants
(Orig. Defendants)

Versus

Mr.Quentin Rodrigues .. Respondent
(Orig. Plaintiff)

Mr.C.U. Singh Senior Counsel with Ms. Mitra Das
Advocate i/b. Vasanti Kunder and V.M. Parkar for the
Appellants
Shri Mohan Bir Singh with Ms. Pooja Jalan for the
Respondents

CORAM : S.R. SATHE, J.

DATED : 08/10/2007

ORAL ORDER :-

1. By consent appeal is heard finally at admission stage.

2. This is a case of Singapore Airline's employee who is at Mumbai for last 20 years but opposing his transfer to Jalandhar, on several grounds.

3. The Appellants-original defendants in Suit Stamp No.2811 of 2007 have preferred this appeal against the order passed in Notice of Motion No.2756 of

2007 by Judge, City Civil Court, Bombay whereby the Plaintiff's application for temporary injunction restraining defendants from implementing the transfer order of Plaintiff dated 09/07/2007 transferring him to Jalandhar till the disposal of suit was allowed. For the sake of convenience hereafter the parties shall be referred to as 'Plaintiff' and 'defendants'.

4. The brief facts giving rise to this appeal are as under :-

The Plaintiff joined services of defendant No.1 Singapore Airlines Ltd. as clerk at Mumbai with effect from 05/01/1987 vide his appointment letter dated 22/12/1986. As per the term No.6 of the said appointment letter, the defendant No.1 Company was entitled to transfer the Plaintiff at any time at any SIA Station all over India at the discretion of the defendant No.1 Company. However, according to Plaintiff, the defendant Company had not transferred its employees from Bombay to outside. The Plaintiff was carrying out trade union activities in defendant No.1 Company for a period of about 10 years and he is also elected as President of the Union. According to

Plaintiff, as the defendant No.1 wanted to prohibit Plaintiff from participating in trade union activities and charter of demands made by the union was not accepted by the defendant, the defendant No.1 vindictively transferred Plaintiff to Jalandhar. They issued transfer order on 09/07/2007 at about 4.45 pm and relieved him at 5.45 pm. He was asked to join at Jalandhar within 15 days. According to Plaintiff, the said order of transfer was malafide and not in accordance with the model standing orders. Besides this, the defendant No.1 Company is not having office or establishment at Jalandhar and Jalandhar is not even on line station for Singapore Airlines. According to Plaintiff, defendant No.1 had in fact transferred Plaintiff services to 'Sondhi Enterprises' who are the general sales agents of defendant No.1 at Jalandhar. Plaintiff, therefore, issued letter dated 11/07/2007 to the defendant No.1 and requested to cancel or withdraw the said transfer order. However, the defendant No.1 did not accept the request of the Plaintiff. The defendant denied all the allegations made in Plaintiff's letter. Hence, on 19/07/2007, Plaintiff filed suit for declaration that the defendant's action

of transferring Plaintiff to Jalandhar is malafide, unlawful, inconsistent with the contract of employment and therefore prayed for permanent injunction restraining defendants from giving effect to the order of transfer dated 09/07/2007.

5. The Plaintiff also filed Notice of Motion and prayed for temporary injunction restraining defendant from implementing the transfer order till the disposal of the suit.

6. The defendants filed their affidavit in reply to the Notice of Motion and opposed the same. They admitted that Plaintiff has been appointed as clerk in defendant No.1 Company with effect from 05/01/1987 as per letter of appointment dated 22/12/1986. They contended that as Plaintiff is a workmen within the meaning of Section-2(s) of the Industrial Dispute Act, 1947 (hereinafter referred to as I.D. Act) and has raised a dispute about the terms and conditions of his employment, it was necessary for the Plaintiff to make the grievance about the same before the appropriate authority and the Civil Court has no jurisdiction to

try the present suit. The defendants further contended that the Plaintiff was aware of the terms and conditions of his service. He was also aware that his services were transferable to any location of the defendant No.1 Company or at a place where the defendant No.1 is having its business operations. According to them, though the Airport is at Amritsar most of the business operations of defendant No.1 with regard to the same are conducted and regulated from Jalandhar where defendant No.1 is having its office. The defendants further contended that as a result of administrative exigency and business requirements they transferred Plaintiff who had experience of about 11 years in Marketing Department to Jalandhar. They also contended that merely because they had not transferred Plaintiff for considerable period would not give him any right to stay at Bombay permanently. Defendants categorically denied that Plaintiff's services were transferred to 'Sondhi Enterprises'. On the contrary, they contended that Plaintiff would continue to be employee of defendant No.1 and defendant No.1 has other employees also at Jalandhar. They also denied Plaintiff's allegation that they have any malice or

grudge against Plaintiff. According to them, the allegations of the Plaintiff that the transfer order is malafide and bad in law is not correct. Defendants further contended that Plaintiff has failed to make out any prima facie case for granting temporary injunction and the balance of convenience is also not in favour of the Plaintiff. Hence, on all these grounds, the defendants prayed for the dismissal of the application.

7. After hearing both the learned Advocates and considering the documents produced by both the parties, the learned Trial Judge came to the conclusion that Civil Court has jurisdiction to try the present suit. According to him, the transfer order in question was malafide and Plaintiff was transferred to non SIA Station and as such it was against the terms and conditions of the Contract of Service and as such bad in law. He, therefore, granted temporary injunction as prayed.

8. Being aggrieved by the above mentioned order, defendants have filed the present appeal. In this appeal before me, Shri C.U. Singh, learned Senior

Advocate for the defendants has urged several points. Firstly, he submitted that the dispute raised by the Plaintiffs in the present suit is an industrial dispute within the meaning of Section 2(k) of the ID Act and as such the Civil Court has no jurisdiction. Secondly, he canvassed before me that the present dispute is not an individual dispute and it is in fact espoused by the union or group of workmen. Thirdly, learned Senior Advocate submitted that transfer of an employee is a regular incident of service. As per the appointment letter, defendant No.1 Company has every right to transfer the Plaintiff and there is absolutely nothing on record to indicate that the transfer in question is malafide. Fourthly, he submitted that the defendant No.1 is having office at Jalandhar and Plaintiff was also aware that he can be transferred to Jalandhar but he has taken the contention that there is no on line station of Singapore Airline at Jalandhar. According to him, the transfer in question is in accordance with the terms and conditions mentioned in the appointment letter. Lastly, he submitted that it is well settled that normally Court should not interfere with the transfer order issued by the employer so long it is not

shown that it is malafide. He therefore submitted that Plaintiff has not made out a prima facie case and the order passed by the learned Trial Judge is not at all sustainable in law. He, therefore submitted that the appeal be allowed and the order passed by the learned Trial Judge be set aside.

9. As against the above arguments, Shri Mohan Bir Singh, learned Advocate for the Plaintiff submitted that as per the appointment letter of the Plaintiff his services are transferable only to SIA Station and Jalandhar is not a SIA Station. So, the transfer is against terms of employment and it is liable to be set aside on that ground alone. Secondly, he urged before me that dispute raised by the Plaintiff is an individual dispute. It is not at all espoused by the union. Plaintiff has not filed the present suit in his capacity as President of the Union. No group of workmen has supported the Plaintiff. So, the dispute in question is certainly not a industrial dispute and as such Civil Court has jurisdiction. The learned Advocate for the Plaintiff also submitted that initially Plaintiff was transferred from one department to other

and dispute in that behalf is raised by the union. As the defendants wanted to throw Plaintiff out of Bombay and restrain him from carrying out union activities he has been deliberately transferred to Jalandhar and the said transfer is malafide. He also submitted that such midterm transfer is bound to cause lot of inconvenience and hardship to Plaintiff and his family members including the children who are school going. He, therefore, submitted that the Plaintiff has made out a prima facie case for temporary injunction and the learned Trial Judge has also used his discretion rightly in favour of the Plaintiff. According to him, there is no necessity for this Court to interfere with the discretionary order of temporary injunction particularly when the same can not be said to be perverse or arbitrary. He, therefore, submitted that the appeal be dismissed.

10. It is not in dispute that as per the appointment letter dated 22/12/1986, Plaintiff took charge as a clerk in defendant No.1 Company on 05/01/1987 at Bombay. It is also an admitted fact that during the last about 20 years the Plaintiff was never

transferred out of Bombay. Admittedly, Plaintiff is carrying out trade union activities for last 10 years and he is elected as President of union. It is also an admitted fact that two months prior to the transfer order dated 09/07/2007 the union had placed charter of demands, however, negotiations in that behalf with the Management had failed and some further time was granted to find out some solution.

11. The first and for most objection of the learned Senior Advocate for the defendant is that the dispute raised by the Plaintiff is an industrial dispute within the meaning of Section 2(k) of the Industrial Dispute Act and as such in order to seek redress about the said dispute it was necessary for the Plaintiff to approach the labour Court or other competent authority as per the provisions of ID Act or other Labour legislation. According to him, the Civil Court has no jurisdiction to try the present suit.

12. In order to find out whether there is any substance in the argument advanced by the learned Senior Advocate for the Defendant in this behalf, it

would be worthwhile to see what section 2(k) of ID Act says. It runs as follows :-

"(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

From the above definition of Industrial Dispute, it is very clear that it can be divided into four parts viz.:-

(i) Factum of dispute.

(ii) Parties to dispute;

- (a) employer and employers, or*
- (b) employers and workmen, or*
- (c) Workmen and workmen*

(iii) Subject-matter of dispute: The dispute should be connected with :

- (a) the employment or non-employment*
- (b) terms of employment, or*
- (c) the conditions of labour of any person.*

(iv) Industry and Industrial dispute : The dispute should relate to an 'industry'. It is not possible to conceive an industrial dispute within the meaning of the Act, unless and until all the four conditions stand satisfied."

So, one thing is certain that in order to fall the dispute within the definition of Industrial Dispute, the dispute must be between employer and employees and not between employer and a single employee. However, it is an admitted fact that certain individual dispute can be deemed to be industrial dispute. For this purpose, useful reference can be made to Section-2(A) of the ID Act. The said Section runs as follows :-

"2-A. Dismissal etc. of an individual workman to be deemed to be an industrial dispute- Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute}"

13. However, it must be noted that the dispute in question is not in respect of discharge, dismissal, retrenchment or termination and as such the provisions of Section 2(A) are not strictly applicable.

14. It was argued on behalf of the defendants that though the present suit is filed by one employee, from the pleadings in the plaint it is very clear that the dispute is espoused by the union or by the group of workmen and as such it is an industrial dispute. It is submitted that only with a view to show that Civil Court has jurisdiction the plaint is drafted skillfully to depict that the dispute raised is an individual dispute. However, according to Shri Singh, learned Senior Advocate the very fact that the Plaintiff has averred in the plaint that his transfer is against the provisions of the Model standing orders goes to show that the dispute in question is an Industrial Dispute. Besides this, he also submitted that when Plaintiff has alleged that he has been victimized only because he was acting as President of Union, in a way the dispute is raised by the union. He, therefore, submitted that the dispute in question be treated as an Industrial Dispute.

15. It is needless to say that the ID Act nowhere contemplates that Industrial Dispute can come into existence in any particular, specific or prescribed

manner. So, whether a dispute which is apparently raised only by an individual has acquired the category of Industrial Dispute or not shall have to be determined from all the facts and other attending circumstances. Similarly, whether the said dispute is espoused by the union or not shall have to be determined by having regard to the relevant circumstances. Some times, though apparently one may get impression that dispute is individual dispute, in fact, it may be the dispute espoused by the union. In support of this proposition, Shri C.U. Singh, learned Advocate for defendants has placed reliance on a case J.H. Jadhav V/s. M/s. Forbes Gokak Ltd. Wherein the Apex Court has observed :-

"As far as espousal is concerned there is no particular form prescribed to effect such espousal. Doubtless, the Union must normally express itself in the form of a resolution which should be proved if it is in issue. However proof of support by the Union may also be available aliunde. It would depend upon the facts of each case. The Tribunal had addressed its mind to the question, appreciated the evidence both oral and documentary and found that the Union had espoused the appellant's cause."

In the instant case, admittedly, the union has

not passed any resolution supporting or aiding the case of Plaintiff. In fact, we find that at one point of time, Plaintiff had also an intention that the union should take up his issue of transfer and for that purpose he had even forwarded a copy of his transfer order to the Secretary of Union and requested to take necessary steps. But admittedly, no further action is taken by the union in this behalf. What is more to be noted is that if really the Plaintiff had an intention to raise the dispute about his transfer as an industrial dispute he could have also called a special meeting for that purpose by exercising his special powers as President. This he could have done as per Clause-17 of the Constitution of the Union. However, we find that he has not done so. So, this is a very important circumstance which goes to show that Plaintiff had decided to fight with employer about his transfer, individually and dispute was certainly not espoused or taken up or supported by the Union. Merely because the Plaintiff has stated that he has been transferred as he is president of trade union, it can not be said that the dispute is raised by the union or group of workmen. Here is a case, where an individual

who incidentally happens to be the president of union is alleging that he has been transferred because he is acting as president of the union. This is not a case, where some other workmen are saying that Plaintiff has been transferred as he is carrying out union activities and he is president of union. If some other workmen would have made such grievance and if they had come forward with that allegation then it could have been said that the individual dispute is espoused by union and converted into industrial dispute. So, having regard to these facts and circumstances, I have no hesitation to hold that this is a case where there is an individual dispute and not industrial dispute as contemplated by Section-2(k) of the Industrial Dispute Act.

16. Once it is said that the dispute in question is not an industrial dispute then question arises whether the Civil Court has jurisdiction to try the present suit? It is needless to say that Section-9 of the Code of Civil Procedure envisages jurisdiction of the Civil Court. As per Section-9 of the CPC all cases of civil nature are entertainable in the Civil Court except

those which are expressly or impliedly barred. It is well settled that while determining the question of jurisdiction of Civil Court one must see the averments in the plaint and to find out what in substance the suit is for. What is the relief claimed in the suit ? If the reliefs claimed in the case are within the exclusive jurisdiction of the Labour Court or whether the reliefs claimed can be granted either by the Civil Court or by the Industrial Court or Labour Court. While considering this aspect reference must be made to a case Apollo Tyres Limited V/s. C.P. Sebastian 2003 i cir 423 on which reliance has been placed by the learned Advocate for the Plaintiffs. In this case, Division Bench of the Kerala High Court has observed :-

"There are three kinds of rights and remedies. One is where a right is created under the common law, in which case the right can be enforced through civil Court. The second is a case where the right may be created by statute. But remedy may not be provided under the statute. In that case the remedy can be pursued in the civil Court. Another case is where both right and remedy are prescribed under the enactment. It is contended that the action of the authorities under the I.D. Act is malafide and against the principles of natural justice or the provision under

which the right is exercised is unconstitutional."

17. Bearing in mind the above observations and having regard to the averments in the plaint and relief claimed by the Plaintiff, I have no hesitation to hold that the present dispute is not an industrial dispute and the Civil Court has jurisdiction to try the present suit. Shri C.U. Singh, learned Senior Advocate for the defendants relying on a case **Rajasthan State Road Transport Corporation V/s. Zakir Hussain 2005 III CLR 424 S.C.** submitted that when the daily wager conductor was terminated during probation period, the Apex Court held that the only remedy available to him is by way of reference under the provision of Industrial Act and the Civil Court has no jurisdiction. However, it must be noted that the facts of the said case and the facts of the case in hand are quite different. In that case, the provision of Section-2(k) and 2(A) of the ID Act were made applicable and as a result of the same, it was held that remedy available was by way of reference. However, in the instant case, neither Section-2(k) nor 2(A) of the I.D. Act are applicable. So, the above

cited rulings is of no use to the Defendants.

18. The learned Senior Advocate for the Plaintiff has also laid his hands on a case **Pearlite Liners Pvt. Ltd. V/s. Manorama Sirsi, 2004 II CLR 965 S.C.** that was a case filed by the Plaintiff making grievance about his transfer. He had claimed civil reliefs including declaration regarding continuance of service employments etc and as the Apex Court held that none of the three reliefs claimed by the Plaintiff in the plaint can be granted by Civil Court as that would indirectly mean that the Court is assisting the Plaintiff in continuing the employment and thus, enforcing contract of personal service which is barred under law, the suit was dismissed. The facts of the above mentioned case are also different from the facts of the case in hand and as such the above cited ruling is not helpful to the present Defendants.

19. Learned Advocate for the Appellant-original defendants has also drawn my attention to a case **P.Pitchumani V/s. Management of Sri Chakra Tyres Ltd.**

2004 (II) CLR 741 to show that Civil Court has no jurisdiction to try the present suit. I have carefully gone through the above cited ruling. The facts of the said case and the facts of the case in hand are quite different. In that case, the dispute was an industrial dispute. However, as mentioned earlier in the instant case the dispute is an individual dispute and has not acquired character of an industrial dispute and as such the above cited ruling is also of no use to the present defendants.

20. Shri C.U. Singh, learned Senior Advocate has also relied upon a case Jitendra Nath Biswas V/s. M/s. Empire of India and Ceylon Tea Company AIR 1990 Supreme Court 255 to show that Civil Court has no jurisdiction. However, the facts of the above cited ruling are different from the facts of the case in hand. In that case, Plaintiff had sought relief of re-instatement and backwages and so, it was held that such relief is available only under ID Act and can not be granted by Civil Court. Here I.D. Act is not at all applicable. So, the above cited ruling will also not help the

defendants.

21. Shri Mohan Bir Singh, learned Advocate for the Plaintiff has drawn my attention to a case Rajasthan State Road Transport Corporation V/s. Krishnakant and others (1995) 5 SCC 75 wherein the Apex Court has observed :-

"Where the dispute arises from general law of contract, i.e., where reliefs are claimed on the basis of the general law of contract, a suit filed in Civil Court can not be said to be not maintainable, even though such a dispute may also constitute an "industrial dispute" within the meaning of Section 2(k) or Section 2-A of the Industrial Disputes Act, 1947."

In this very authority, the Apex Court has also observed :-

"Any violation of the Certified Standing Orders entitles an employee to appropriate relief either before the forums created by the Industrial Disputes Act or the civil court where recourse to civil court is open according to the principles indicated herein."

In the instant case, the Plaintiff is only asking for permanent injunction restraining defendants

from implementing the transfer order dated 09/07/2007 on the ground that the said order is malafide and against the terms of service contract. So, in view of the above position, it has to be held that Civil Court has jurisdiction to try the present suit and there is no substance in the arguments advanced by the learned Advocate for the defendant that suit is liable to be dismissed on the ground of jurisdiction.

22. The learned Advocate for the Plaintiff strenuously argued before me that in the instant case for the last about 20 years Plaintiff is serving at Mumbai. The defendants have hardly transferred any employee posted at Mumbai outside Mumbai. According to him, initially, defendants had transferred Plaintiff from one department to another department at Mumbai and subsequently, they transferred him to Jalandhar. It is alleged by the Plaintiff that as Plaintiff was working for the Union and was also president of the said union with a view to remove him from the said post and out of Bombay the defendants vindictively transferred him to Jalandhar. According to Plaintiff, the said action of the defendants is malafide and illegal. Plaintiff has

therefore prayed that defendants be restrained from implementing the order of transfer dated 09/07/2007 till the disposal of the suit.

23. While considering the above case of the Plaintiff, firstly, one has to see whether as per the terms of the contract or as per the appointment letter issued in favour of Plaintiff his service are transferable ? While considering this aspect, reference can be made to the Plaintiff's appointment letter dated 22/12/1986. Clause-6 of the said letter runs as follows:-

"Transfer - You may transferred at any time to any SIA Station within India at the discretion of SIA." So, one thing is certain that the Plaintiff's services are transferable and the defendants have got every right to transfer him as per the clause-6, mentioned above. Simply because during last several years Plaintiff was not transferred, that does not mean that defendants have lost their right to transfer the Plaintiff. Plaintiff should consider himself lucky that he was not transferred during all these years. We can not ignore the fact that admittedly, there are few instances when

the defendants have transferred their employee posted at one place to other place. There are various authoritative pronouncements in which it has been held that who should work where, is essentially for the employer to decide. If public interest and administrative exigency requires shifting of an employee from one place to another, the employer is undoubtedly having the power to effect the transfer. It is also well settled that transfer is an incident of service and if made in administrative exigency, normally, it is not to be interfered with by the Courts unless it appears that the transfer is made vindictively and it is malafide. It has been so held by the Apex Court in **Public Services Tribunal Bar Associations V/s State of UP 2003 (96) FLR 1048 (SC)**.

It is needless to say that when the Plaintiff has alleged that the action of defendants transferring him from Mumbai to Jalandhar is malafide and it amounts to victimization, the burden lies on him to show at least prima facie, that there is substance in his allegation. Merely because, the Plaintiff is a President of the Union and is carrying out trade union activities, it

can not be said that the defendants are having any grudge or grievance against Plaintiff. On the contrary, when it is an admitted position that for last about 10 years, the Plaintiff is doing trade union activities in the defendant-company and till this time the defendants have not transferred him, clearly shows that defendant had no ill intention in transferring the Plaintiff to Jalandhar. On the contrary, the defendants have filed an affidavit, stating therein, that as the Plaintiff is having experience in marketing department for a period of about 11 years and it is necessary for them to concentrate on their business at Jalandhar, they have transferred the Plaintiff to the said place. It was tried to be argued on behalf of the Plaintiff that only Plaintiff is transferred to Jalandhar but no one from Jalandhar is transferred to Mumbai. I fail to understand as to how this circumstance supports the case of the Plaintiff. On the contrary, it would go to show that defendants are in need of additional hand at Jalandhar. It was also tried to be argued on behalf of the Plaintiff that no sufficient advance notice of transfer was given to the Plaintiff. For that purpose, reliance is placed on the standing orders. However, we

find that in clause-6, reproduced above, it has been specifically mentioned that Plaintiff can be transferred at any time at any SIA Station within India. Plaintiff can not make grievance that no sufficient advance notice was given for transfer. On the contrary, admittedly, Plaintiff is allowed to have 15 days joining period. The defendants have provided necessary financial help and even provided temporary accommodation in the hotel at Jalandhar. Admittedly, there would not be any reduction in the emoluments of the Plaintiff. So, there is absolutely nothing to suggest that defendants have transferred the Plaintiff with any ill intention. So, prima facie, I do not agree with the observations made by the learned Trial Judge that the transfer in question is malafide. Finding recorded by the learned Trial Judge in that behalf, is certainly not borne out from the material on record.

24. By now it is well settled that in matters of transfer the employee who has been served with the transfer order must first report to the place where he is transferred and thereafter make a representation or take out legal proceedings their against. Inconvenience

arising from transfer has been held by the Supreme Court to be "normal incident" of service not justifying interference with the transfer orders. It has been so observed by this Court (CORAM : B.N. SRIKRISHNA, J.) (As His Lordship then was) in Shivaji A. More V/s. Estate Manager, Maharashtra State Farming Corporation Ltd. and another WP No.579 of 1988 decided on 04/08/1995.

25. The learned Trial Judge has accepted the case of Plaintiff that transfer in question is against the terms of employment. According to the Plaintiff and the learned Trial Judge the defendants were entitled to transfer Plaintiff only at SIA Station and Jalandhar is not a SIA Station. So, we have to first see what was the exact stipulation in that behalf. It is true that in Clause-6 reproduced above, it is mentioned that the Plaintiff is liable to be transferred at any SIA station within India. However, admittedly, a list of SIA Stations is not provided in the appointment letter or anywhere. Not only that but no where it is clarified as to what is meant by SIA Station. An Attempt has been

made on behalf of the Plaintiff to show that SIA station means a place where from Singapore Airlines Flights are available. However, one does not know where from this meaning is derived by the Plaintiff. Here the word "Station" does not mean the place where from Singapore Airlines Flights are available. It does not mean the place where said flights stop. If we carefully read the clause-6 then it must be held that here the word "Station" is used to indicate the place where from specified activities or services of Singapore Airlines are available. That activities or services do not mean only the availability of flights. The word "Station" here is used to denote the place of establishment. So, one can not jump to the conclusion that here the word "Station" means 'regular stopping place'. Quite often we say that Mr.X is posted at a particular station. It only means that he is posted at a particular place. So, by SIA Station it only means that the place of establishment where SIA is having its office or establishment. So, if SIA is not having any establishment or office at a particular city or place, for example at Sangli then Sangli can not be treated as SIA Station. But, if SIA is having establishment or

office say at Nagpur or Pune or Jalandhar then certainly, the said places can be treated as SIA Station. So, I am not inclined to accept the version of the Plaintiff and the learned Trial Judge that Jalandhar is not a SIA Station, particularly when the document which is produced by the Plaintiff himself i.e. the time table of Singapore Airlines gives a list of SIA offices and Sales Agents and at page No.328 of the said document namely time table. Jalandhar is shown as place where SIA is having office. It must be noted that inspite of knowing this position we find that Plaintiff has made a totally false statement in his application and affidavit that there is no office of Singapore Airlines at Jalandhar.

26. If we carefully take into consideration the reply given by the Plaintiff to transfer order, it gives the impression that Plaintiff was also in fact aware that as per terms and conditions of his appointment he can be posted at any SIA Station and it includes Jalandhar. Had it not been so, the Plaintiff would have categorically stated in his reply dated 11/07/2007 that as per the terms of his employment, he

is to be posted only at a place where from Singapore Airlines Flights are available and such flights are not available from Jalandhar and as such it can not be treated as SIA Station. But no such specific case is made out by the Plaintiff either in the reply or even in the plaint.

27. From the pleadings of the Plaintiff, it appears that all along he has agitated that by transferring him to Jalandhar the defendants have in fact asked him to work under 'Sondhi Enterprises'. However, there is absolutely no substance in this contention. It seems that the office of the defendants is established, where 'Sondhi Enterprises' are having their office. It has come on record that defendant-company has already posted two officials at Jalandhar and they are working at the office of the defendant-Company and address of Sondhi Enterprises is given in the time table mentioned above. There is absolutely nothing on record to show that after Plaintiff's transfer to Jalandhar, he was to get salary from 'Sondhi Enterprises'. On the contrary, there is enough material to show that the Plaintiff was to get his salary from the defendant-Company. Thus, we

find that the Plaintiff had in fact no justifiable ground to stay at Mumbai and not to join at the place where he is transferred. The Plaintiff is in fact trying to avoid transfer on one pretext or the other, which in my opinion he is certainly not entitled to.

28. There is another aspect of the matter. If really the defendant-company had an ill intention to transfer the Plaintiff from Mumbai then after finding that the Plaintiff is making out a grievance that Jalandhar is not a SIA station, the defendant-company could have very well transferred him to Amritsar wherefrom Singapore Airline Flights are available. So that the main alleged object of the defendant of removing Plaintiff from Mumbai could have been served. But the defendants have not done so. It is obviously because from the administrative point of view, they are in need of Plaintiff's services at Jalandhar Station and not at Amritsar. So, this would also indicate that the transfer in question is not malafide. Nor it is in contravention with the terms and conditions of the appointment order. When such is the position Plaintiff has miserably failed to make out any prima facie case

and it must be said that Plaintiff is not entitled to get temporary injunction as prayed.

29. Turning to the question of balance of convenience, it must be noted that if the temporary injunction is granted in favour of Plaintiff then greater hardship and inconvenience will be caused to the defendants. As against this, no loss is likely to be caused to the Plaintiffs. He would be getting all his emoluments even at Jalandhar and what is more to be noted is that Plaintiff is in fact not having any legal right to stay over here at Mumbai. So, even if he is transferred to Jalandhar, by no stretch of imagination it can be said that the action of defendants is causing any breach of Plaintiff's right.

30. In view of the above discussion, I am of the considered view that the learned Trial Judge has wrongly held that the Plaintiff's transfer to Jalandhar is not in accordance with the terms of contract and the same is malafide. The said finding is not sustainable in law. Hence I pass the following order :-

O R D E R

Appeal is allowed.

The order passed by the Judge, City Civil Court Bombay in Notice of Motion No.2756 of 2007 on 28/08/2007 is set aside.

The said Notice of Motion is dismissed.

The Trial Court is directed to dispose off the suit on merits according to law on or before 31/01/2008.

Under the circumstances of the case parties to bear their own costs of this appeal.

At this stage, learned Advocate for the Respondent submits that the operation of this order be stayed for a period of 8 weeks. The submission is opposed by the learned Advocate for defendants. However, with a view to give opportunity to Plaintiff to approach Supreme Court, the order is stayed for 8 weeks from today.

(S.R.SATHE, J.)